IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

RSA.No. 171 of 2006(D)

(AGAINST THE JUDGMENT AND DECREE IN AS.296/2001 of III ADDL. DISTRICT COURT, TRIVANDRUM AGAINST THE JUDGMENT AND DECREE IN OS.1081/1999 of II ADDL.M.C.,TRIVANDRUM)

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APPELLANT/APPELLANT/PLAINTIFF:

RADHA, AGED 45 YEARS,
W/O. VINCENT, RESIDING AT VINS COLLEGE,
A.P.1/479/1, MEILAMMOODU, ARUVIKKARA,
P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT: RESPONDENT/DEFENDANT:

REGHUNATHAN PILLAI,
S/O. THANKAPPAN PILLAI, MARUNAPURA VEEDU,
MANNADI LANE, AMBALAMUKKU, THIRUVANANTHAPURAM.

BY ADV. SRI.P.A.AHAMMED
SRI.THOUFEEK AHAMED

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 171 OF 2006

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DATED THIS THE 4th DAY OF JUNE, 2007

JUDGMENT

Plaintiff in O.S.1081 of 1999 on the file of Additional Munsiff Court, Thiruvananthapuram is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for declaration of her title after setting aside Ext.B7 sale deed. (Ext.A1 is the registration copy of that sale deed dated 26.10.1998). Appellant contended that though Ext.A1 document is styled as a sale deed it is in fact a document executed as security for Rs.1,00,000/- borrowed from respondent and that too, at the instance of her husband and she had no intention to transfer the property in favour of respondent and respondent did not derive any title thereunder and in spite of execution of Ext.A1 the title continued with her and therefore she is entitled to get the decree for declaration of title after setting aside Ext.A1 sale deed. Respondent resisted the claim contending that Ext.A1 was executed as an outright sale deed and it was not a security for the alleged loan and it is valid and binding on the appellant and therefore appellant is not entitled to the decree sought for.

2. Learned Munsiff framed necessary issues. On the evidence of Pws 1 to 5, Dws 1 to 3, Exts.A1 to A5 and Exts.B1 to B14 and Ext.C1. Learned Munsiff held that Ext.A1 is not a document of security but a sale deed for valid consideration and therefore appellant has no title to the plaint schedule property. The suit was dismissed. Appellant challenged the decree and judgment before District Court, Thiruvananthapuram in A.S.296 of 2001. Learned Additional District Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant and learned counsel appearing for respondent, who appeared of his own, were heard. The argument of the learned counsel appearing for appellant is that though Ext.B8 and B9 agreements were relied on by respondent before courts below, existence of Ext.B8 and B9 were not mentioned in Ext.B7 sale deed and the signature of the appellant is not seen in the first page of Ext.B8 agreement and on proper appreciation of evidence, courts below should have found that Ext.B8 and B9 agreements were created by the respondent making use of blank signed papers issued by appellant towards the security of the loan obtained. It was

argued that when the property, even as per Ext.C1 report of the Commissioner, is valued more than Rupees Six Lakhs, the consideration shown in Ext.A1 is only Rupees One lakh and in such circumstances courts below should have found that Ext.B7 is not a sale deed but only a security. Learned counsel also argued that evidence establish that as seen in Ext.B8 agreement respondent did not pay the loan amount outstanding in the property and it was paid by the husband of the appellant from the salary and in such circumstances, courts below should have found that Ext.B7 is not a sale deed but only a document executed as security and therefore appellant has title to the plaint schedule property.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. Ext.B7 is an outright sale deed. What is contended by the appellant was that though it was styled as a sale deed, it was executed as security. The contention in the plaint and the evidence of appellant show that what was canvassed by appellant was that while executing Ext.A1, there was an oral agreement whereunder respondent agreed to recovey the property on receiving Rs.1,00,000/- which was allegedly received by

appellant as loan. So the attempt of appellant is to adduce evidence as against the recitals and conditions provided in Ext.A1. Such evidence is admissible, only if appellant has a case that Ext.B7 was a sham and nominal document which was not intended to be acted upon. From the very basis of the case set up by the appellant, she cannot be heard to contend that Ext.B7 was a sham and nominal document. If it was a sham document, there was no necessity to execute a reconveyance deed as sought to be proved by appellant. Therefore Ext.B7 is not a sham document. If so, under Section 92 of the Evidence Act, appellant is not entitled to lead evidence against the terms and conditions of Ext.B7. So also appellant is not entitled to set up an oral agreement for reconveyance of the property worth lakhs of rupees as it could only be under a registered document.

5. Whatever it be, trial court and first appellate court on appreciating the evidence, found that the case of appellant that Ext.B7 was executed as a document of security and not as a sale deed is not correct. That is a factual finding. That factual finding cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure. The jurisdiction of this court cannot be converted to a third tier of fact finding

authority. Courts below, on the evidence, entered a definite factual finding that contention of appellant that Ext.B7 was executed as security is not correct. In such circumstances, no substantial question of law is involved in the appeal. It is only to be dismissed. Learned counsel appearing for appellant then submitted that even though it is the admitted case of respondent that he had undertaken to discharge the liability outstanding in the property, it was not paid by respondent and as a result, loan amount was being recovered from the salary of the husband of the appellant. It cannot be disputed that liability to discharge the loan amount outstanding in the property is on the respondent. If so, on the failure of respondent to pay any amount and appellant and her husband had to pay that amount to discharge the liability, appellant is entitled to realise the same from respondent. The dismissal of the suit will not affect that right of appellant.

RSA is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-